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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92063349
Party	Defendant GlueBoss Adhesive Company LLC
Correspondence Address	GLUEBOSS ADHESIVE COMPANY LLC 435 HARRISON STREET ELKHART, IN 46516-2771 UNITED STATES lou@gemstoness.com, lou.giovannini@gmail.com
Submission	Response to Board Order/Inquiry
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Date	05/11/2016
Attachments	1-Registrants Response to Notice of Default and Motion w Ex A.pdf(41537 bytes )

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

Accumetric, LLC,	)	
	)	Cancellation No. 92063349
Petitioner,	)	
	)	Trademark Registration No. 4,244,791
v.	)	
	)	
GlueBoss Adhesive Company, LLC	)	
	)	
Registrant.	)	

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**REGISTRANT’S RESPONSE TO NOTICE OF DEFAULT AND  
MOTION TO SET ASIDE DEFAULT**

Registrant GlueBoss Adhesive Company, LLC (GlueBoss), through counsel, makes this response to the Notice of Default issued on May 9, 2016, and moves that the Notice of Default be set aside for good cause shown.

If a defendant who has failed to file a timely answer to the Petition for Cancellation responds to a Notice of Default by filing a satisfactory showing of good cause why default judgment should not be entered against it, the Trademark Trial and Appeal Board (TTAB), in its discretion, is to set aside the Notice of Default. TBMP §312.02; *Paolo’s Associates Limited Partnership v. Bodo*, 21 USPQ2d 1899, 1903-04 (Commissioner 1990). It is the policy of the law and the Board to decide cases on their merits. *Id.*

In this instance, (1) Registrant GlueBoss’s failure to file a timely answer was not the result of willful conduct or gross neglect on the part of Registrant, (2) Petitioner Accumetric, LLC (Accumetric) will not be substantially prejudiced by the delay, and (3) Registrant GlueBoss has a meritorious defense to this action. The Notice of Default should be set aside.

**Registrant GlueBoss’s failure to file a timely answer was not the result of willful conduct or gross neglect.** Registrant GlueBoss and its correspondent are not attorneys.

Registrant GlueBoss is not aware of having received the mailing of the Petition by the TTAB on March 18, 2016 and is not aware of receipt of the mailing purportedly made by Petitioner on March 2, 2016. Whether or not those mailings were actually received by Registrant GlueBoss is unknown, but Registrant does receive a large amount of “junk” mailings on a daily basis and whether those mailings were inadvertently mixed with and believed to be junk mailings is unknown. Upon receipt by email on May 9, 2016 of the Notice of Default issued that same day, Louis Giovannini of Registrant immediately contacted the Patent and Trademark Office by telephone on that same day to inquiry about the Notice of Default. In that telephone conference Registrant was then advised by Mr. Shaka of the filing of the Petition for Cancellation to which the Notice of Default related and that the Petition for Cancellation had previously been mailed. Service Request No. 397843559 is a record of Registrant’s communication with Mr. Shaka. Registrant immediately contacted undersigned counsel in order to submit this response showing good cause.

**Petitioner Accumetric, LLC will not be substantially prejudiced by any delay in submitting the answer in this proceeding and the setting aside of the default.** The answer to the petition was due April 27, 2016 and this response is being submitted two weeks after that date. The Notice of Default provided that Registrant GlueBoss may show cause prior to May 27, 2016 as to why default judgement should not be entered. The Response is submitted well prior to the May 27 date. Petitioner Accumetric cannot have been substantially prejudiced by this *de minimis* delay, particularly since Petitioner Accumetric would itself also have received the Notice that provided Respondent up to May 27, 2016 to submit this response and thus was well aware that this response may be filed.

**Registrant GlueBoss has a meritoriously defense to the Petition for Cancellation.** Registrant’s registration of the mark GlueBoss and Design, Reg. No. 4,244,791 does not result in

a likelihood of confusion with any mark or marks of Petitioner Accumetric. The reason for the absence of likelihood of confusion includes, for example, that the overall marks, considered in their entireties, are dissimilar and are distinctly different in concept, sound and appearance.

There are a number of currently existing, third party registrations and applications for trademarks that include the word “boss” as part of the registered mark. This includes a number of currently existing, third party registrations and applications for trademarks in International Class 17 that include the word “boss” as part of the registered mark. Included among those third party registrations in International Class 17, for example, are:

<b>Mark</b>	<b>Goods</b>	<b>Reg No.</b>
STONE BOSS & Design	Adhesives for applying stone (IC 1); Polymer sealant for cleaning, shining and protecting stone surfaces, ... (IC 3); Adhesive sealants for stone (IC 17); Retail store and online retail store services featuring products for stone working, including sealants for stone, adhesives, ... (IC 35); Delivery services via truck in the field of products for stone working, including sealants for stone, adhesives, ... (IC 39)	3,154,570
STONE BOSS	Adhesives for applying stone (IC 1); Polymer sealant for cleaning, shining and protecting stone surfaces, ... (IC 3); Adhesive sealants for stone (IC 17); Retail store and online retail store services featuring products for stone working, including sealants for stone, adhesives, ... (IC 35); Delivery services via truck in the field of products for stone working, including sealants for stone, adhesives, ... (IC 39)	3,151,342
SCREENBOSS	Adhesive sealants for use in screen printing (IC 17)	3,764,454
PANTHER BOSS	Adhesives for applying stone (IC 1); Adhesive sealants for stone (IC 17)	4,012,862
MUD BOSS	Drywall joint compound (IC 17)	3,945,755

Moreover, Registrant's mark registered November 20, 2012 and claims a first use of January 19, 2012, since which times Registrant has not been aware of any likelihood of confusion involving rights of Accumetric. There is no likelihood of confusion, mistake or deception between Registrant's registered mark and registration and any rights of Petitioner Accumetric.

Registrant GlueBoss submits herewith as Exhibit A an Answer to the Petition which Registrant seeks leave to be accepted for late filing.

WHEREFORE, Registrant requests that the Notice of Default be set aside and that Judgment by Default not be entered against Registrant.

Respectfully submitted,

GlueBoss Adhesive Company, LLC

Date: May 11, 2016

By: /Terence J. Linn/  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on the 11th day of May, 2016, upon the following via First Class Mail:

Samantha M. Quimby  
Frost Brown Todd LLC  
400 W Narjet Street, 32<sup>nd</sup> Floor  
Louisville, KY 40202

/s/ Terence J. Linn  
May 11, 2016

# EXHIBIT A

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

Accumetric, LLC,	)	
	)	Cancellation No. 92063349
Petitioner,	)	
	)	Trademark Registration No. 4,244,791
v.	)	
	)	
GlueBoss Adhesive Company, LLC	)	
	)	
Registrant.	)	

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**REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION**

Registrant, GlueBoss Adhesive Company, LLC, by and through its attorneys, hereby answers the allegations set forth in the Petition for Cancellation as follows:

1. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 1 and therefore denies the same.
2. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 2 and therefore denies the same.
3. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 3 and therefore denies the same.
4. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 4 and therefore denies the same.
5. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 5 and therefore denies the same.
6. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 6 and therefore denies the same.
7. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 7 and therefore denies the same.



8. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 8 and therefore denies the same.

9. Registrant objects to Petitioner's characterization of "the GLUEBOSS Registered Mark" to the extent that it explicitly or implicitly characterizes Registrant's mark other than as Registered in Reg No. 4,244,791, and to the extent that Petitioner's characterization is inaccurate it is denied. Notwithstanding this objection and without waiver thereof, Registrant admits that Registrant applied for the registered mark of Registration No. 4,244,791 for use on acrylic based sealants and adhesives under Section 1(a) of the Trademark Act on January 25, 2012. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph and therefore denies the same.

10. Registrant admits that Registrant's Registration No. 4,244,791 and Registered Mark of Reg. No. 4,244,791 was registered on November 20, 2012 for use in connection with acrylic based sealants and adhesives in International Class 17. Applicant is without knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph and therefore denies the same.

11. Registrant admits that Registrant's Registered Mark of Reg. No. 4,244,791 claims a first use date of January 19, 2012. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph and therefore denies the same.

12. Admitted.

13. Denied.

14. Denied.

15. Registrant is without knowledge or information sufficient to form a belief as to the allegations of the first sentence of paragraph 15 and therefore denies the same. The remaining allegations of paragraph 15 are denied.

16. Denied.
17. Denied.
18. Denied.

#### FIRST AFFIRMATIVE DEFENSE

19. The Petition for Cancellation fails to state a claim upon which relief can be granted.

#### SECOND AFFIRMATIVE DEFENSE

20. There is no likelihood of confusion, mistake or deception between Registrant's Registered Mark 4,244,791 and any mark claimed by Petitioner. Registrant's mark is a member of a family of marks that further eliminates any likelihood of confusion, mistake or deception between Registrant's Registered Mark 4,244,791 and any mark claimed by Petitioner.

#### THIRD AFFIRMATIVE DEFENSE

21. Petitioner's alleged mark does not point uniquely and unmistakably to the identity or persona of Petitioner. Petitioner fails to even allege that Petitioner's alleged mark points uniquely and unmistakably to the identity or persona of Petitioner. As alleged by Petitioner, the alleged mark of Petitioner is a product mark and is not the identity or persona of Petitioner itself. Petitioner neither alleges nor has basis to argue for cancellation of Registrant's Registered Mark under Section 2(a) of the Trademark Act due to a connection as provided under that Section of the Trademark Act.

#### FOURTH AFFIRMATIVE DEFENSE

22. The alleged mark or marks of Petitioner is not famous and has not achieved the status of a famous mark as provided under the Trademark Act. Petitioner does not have famous trademark rights as required under Section 43(c) of the Trademark Act.

#### FIFTH AFFIRMATIVE DEFENSE

23. Registrants' Registered mark of Reg. No. 4,244,791 does not dilute any rights of Petitioner, does not dilute any famous trademark rights of Petitioner and Registrant and its activities do not dilute any rights of Petitioner under Section 43(c) of the Trademark Act.

#### SIXTH AFFIRMATIVE DEFENSE

24. Registrant is precluded from cancellation of Registrant's Mark under the Doctrines of Laches, Estoppel, Acquiescence and Waiver.

WHEREFORE, Registrant, GlueBoss Adhesives Company, LLC, respectfully requests judgment dismissing the Petitioner's Petition for Cancellation of Registration No. 4,244,791 and that the Petition be denied in all respects.

Respectfully submitted,

GlueBoss Adhesive Company, LLC

Date: May 11, 2016

By: /Terence J. Linn/  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on the 11<sup>th</sup> day of May, 2016, upon the following via First Class Mail:

Samantha M. Quimby  
Frost Brown Todd LLC  
400 W Narjet Street, 32<sup>nd</sup> Floor  
Louisville, KY 40202

/s/ Terence J. Linn  
May 11, 2016